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REPORT ON EUROPEAN GOVERNANCE (2003-2004)

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1. INTRODUCTION

Following a discussion open to all the sectors concerned, the Commission approved the White Paper on European governance in July 2001.¹ It thus respected the commitment given at the beginning of its term of office when, before the European Parliament, the President of the Commission placed European governance among the political priorities for the period 2000-2004.²

The White Paper and its implementation are the Commission's response to certain questions which the authorities and citizens are currently asking about the European Union's capacity and method for making the Union's policies more effective and bringing the institutions closer to citizens.³ The reform of European governance aimed to promote new forms of governance to make the institutions and the Union's various policies operate more effectively. Thus, various general aspects of the Union's decision-making process have been or are being improved thanks to the White Paper and the measures implementing it, for instance reform of the institutions, the establishment of a culture of public consultation, the simplification of legislation, the progressive establishment of a common impact assessment system, reform of the committee system and improved monitoring of the application of Community law.

Designed "without amending the Treaty", the White Paper has nevertheless played an important role in contributing to the debate on the Union's political aims. The main subjects in the debate opened by the White Paper appear in the Laeken declaration. They were examined by the members of the Convention on the Future of Europe and taken up to some extent in the draft Treaty establishing a Constitution for Europe.⁴

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This report follows on from the one adopted by the Commission in 2002.⁵ It reviews the implementation (for 2003 and the first half of 2004) of the White Paper on European governance and summarises in its annex progress made over the current Commission's entire term of office on the measures laid down in the White Paper.

¹ COM(2001) 428 final, 25 July 2001.

² When it took office, the Prodi Commission set itself four strategic objectives: to promote new forms of European governance; to stabilise Europe and give it a stronger voice in the world; to draw up a new economic and social agenda; and to promote a better quality of life. See the Commission's strategic objectives for 2000-2005: "Shaping the New Europe" (COM(2000) 154, 9 February 2000).

³ The word "method" should be understood in the context of "governance" being taken to mean "any rules, processes and practices that affect the quality of how powers are exercised at European level" (as defined in the White Paper).

⁴ This is particularly the case for participatory democracy, the culture of consultation and transparency, the Union's regional and local dimension, administrative cooperation between the Member States and, in general, the consecration of the renewed Community method (see below).

⁵ SEC(2002) 705 final, 11 December 2002.

2. PROGRESS IN EUROPEAN GOVERNANCE IN 2003 AND 2004

2.1. Better lawmaking

In June 2002, inspired by the reactions to the White Paper on European governance⁶ and the resolution adopted by the European Parliament following the Kaufmann report,⁷ and bearing in mind the recommendations of the “Mandelkern inter-governmental group”,⁸ the Commission proposed a global framework for “Better lawmaking” and an action plan aimed at “simplifying and improving the regulatory environment”.⁹

In 2002 and at the beginning of 2003, the Commission firmed up its action plan with eight communications targeted at the various measures in the White Paper, while setting out in parallel with the European Parliament and the Council a global strategy for better lawmaking. These two tasks have been carried out. From mid-2003, the Commission has therefore concentrated entirely on the implementation of new procedures and practices.

The Commission initiatives consist of two sets of measures: those aimed at improving the preparation of Community legislation and following more closely the adoption of the Union’s legislative acts (“*better legislation*”) on the one hand, and those aimed at improving the implementation of Community policies (“*better application*”) on the other.

The main measures aimed at improving the preparation of legislation relate to four areas: public consultation, impact assessment, obtaining and using expertise and the use of agencies.

Progress in the implementation of Union policies relates essentially to updating and simplifying legislation in force, improving the application and the monitoring of the application of Community law (including improving coordination machinery), and improving the committee procedure.

Bearing in mind the scope of this report, only the major measures and developments are reviewed, and then only in summary form.

2.2. Participation of civil society: new standards for public consultation and partnership agreements

Following the adoption in 2002 of general principles and minimum standards for consultation of interested non-institutional parties,¹⁰ the Commission concentrated on the application of these minimum standards, which are applied systematically to all major policy initiatives.¹¹ The first stage consisted of applying these standards to all proposals requiring an in-depth impact analysis. The main innovations generated by the consultation standards are: the

⁶ COM(2001) 727, 25 June 2001.

⁷ Report on the Commission White Paper on “European governance” A5-0399/2001, adopted by the European Parliament on 29 November 2001 (OJ C 153E, 27 June 2002, pp.314-322).

⁸ Adopted in November 2001 (<http://ue.eu.int/pressData/en/misc/DOC.68853.pdf>).

⁹ COM(2002) 275, 5 June 2002 and COM(2002) 278, 5 June 2002.

¹⁰ COM(2002) 704.

¹¹ Communication from the Commission - Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission COM(2002) 704, 11 December 2002. These new standards were adopted following wide-ranging consultation, during which the Commission anticipated application of the best practices it was proposing. Before adopting this communication, the Commission gathered the opinions of citizens, interest groups, associations and operators and reported on the results and on reactions to the comments received (see COM(2002) 277, 5 June 2002).

definition of a minimum deadline for consultation,¹² the obligation to report on the results, the obligation for an appropriate reaction to comments received and the establishment of a single access point for all the Commission's public consultations.

In 2003, the Commission produced five Green Papers and 142 communications. The number of Green Papers and communications in particular has increased significantly during the last five years (except for 2002).¹³ It also published 73 reports and organised 60 Internet consultations via the "Your voice in Europe" website, the Commission's single access point for consultations.¹⁴ Looking beyond the figures, these initiatives testify to the Commission's efforts to establish a growing public consultation culture in the Union, as called for in the White Paper on governance.

A breakdown by sector of consultations in 2003 largely corresponds to that for previous years. The largest number of consultations related in particular to agriculture and fisheries, employment and social policy, external relations, industry, justice and home affairs, transport and energy, the environment, economic policy, the information society and health and consumer protection.

It may be noted that the minimum standards concerning publication on the single access point, deadlines for replies and reports on the results were applied in practically all cases. The deadline accorded to respondents was frequently greater than the minimum standard of eight weeks. The choice of target groups was only contested on very rare occasions. However, particular efforts are still required in order to improve the return of information to the sectors concerned.

With regard to the near future, it will be worthwhile ensuring consolidation of the application of the principles and minimum standards for consultation; the eligibility criteria for the CONECCS database should be reviewed, particularly with a view to improving the coherence of its content, and its usefulness should be optimised. Moreover, the Commission will actively monitor the work of the European Economic and Social Committee in order to seek a greater complementarity of measures; this, in particular, should lead to optimum cooperation on the basis of a cooperation protocol revised to take more account of the important role of the EECS in the framework of European governance. It will also monitor the implementation of Article 47 of the draft Constitution, which refers to associations representing civil society.

The White Paper on European governance considered that "in some policy sectors, where consultative practices are already well established, the Commission could develop more extensive partnership arrangements". This action has not been implemented, as any progress concerning the dialogue with civil society must be examined in relation to experience acquired with regard to applying minimum standards for consultation, the provisions in the draft constitution and the requirements of the various areas particularly concerned.

2.3. Impact analysis: new procedure

In 2002, the Commission adopted a new method of impact analysis for all major Commission initiatives, taking into account the economic, social and environmental impact of the proposal

¹² At least eight weeks for receiving replies to written consultations or 20 working days' notice for meetings.

¹³ Communications adopted between 1 January and 3 November: 142 in 2003; 96 in 2002; 125 in 2001; 112 in 2000; and 77 in 1999.

¹⁴ See: http://europa.eu.int/yourvoice/consultations/index_en.htm.

concerned.¹⁵ This method consists of two phases: a preliminary analysis (giving an overall view of the problem and of possible choices) and an extended impact analysis (EIA).

In quantitative terms, the Commission noted at the end of December 2003 that approximately 50% of the EIAs initially scheduled had been completed.¹⁶ Given that this was the first year of implementation of the method, the Commission considers this an encouraging result in so far as EIAs are complex exercises requiring new practices with regard to the scheduling of work, resource planning, training and analytical capacity which cannot produce their full effects without a period of adaptation. The Commission is aware of these difficulties and has now begun internal reforms enabling it to meet demands in these areas. The relatively low implementation rate appears to be the result of optimistic planning of the Commission's work programme for 2003, a lack of resources and/or political difficulties. An extended impact analysis is a demanding exercise, and departments have had to adapt to this new procedure.

In qualitative terms, the direct and indirect consequences of adopting such a new procedure have been positive overall: it has contributed significantly to improving transparency, strengthening the analytical content of proposals, promoting coordination between departments and dialogue with those sectors more particularly concerned by the Commission's initiatives. Overall, it has led to proposals which are more balanced and more in line with the objectives pursued by the various Community policies.

The first EIAs highlighted several teething troubles which the Commission is trying to resolve. Firstly, the economic, environmental and social impact aspects of the impact analyses should be assessed in a more detailed manner. Secondly, the EIAs should include a more thorough assessment of the principles of subsidiarity and proportionality, particularly when examining the respective merits of different regulatory approaches. Thirdly, the analysis generally concentrates on a single option. Where this is the case, the main alternatives should be examined systematically. Fourthly, the quantifying of impacts, particularly in monetary terms, remains limited for the moment. This is clearly the most demanding part of the exercise. Fifthly, more effort should be made to make EIAs more accessible to the general public.

In order to resolve these problems, the Commission's Secretariat General and horizontal Directorates-General are to promote a series of new initiatives, the details of which were published in the annual report on "Better lawmaking" for 2003.¹⁷

The Commission has carried out internal discussions during the spring of 2004 with a view to examining early experiences and has examined how impact analysis could be further refined for more effective implementation.

2.4 Obtaining and using expertise: new guidelines

Following the undertaking given in the White Paper on European governance and in the Commission's action plan "Science and society", in December 2002 the Commission adopted a communication defining the principles and guidelines determining good practices with

¹⁵ COM(2002) 276, 5 June 2002.

¹⁶ This represents coverage of some 50% of proposals of major importance contained in the Commission's work programme. For a detailed analysis of EIAs, see Annex 3 to the 11th annual report on "better lawmaking" corresponding to 2003 (COM(2003) 770, 12 December 2003).

¹⁷ Ibidem.

regard to expertise.¹⁸ These rules, which encourage quality, openness and effectiveness, are applied where the Commission seeks and uses the opinion of external experts.

Implementation of the new guidelines began at different levels in 2003. The need for maximum openness was taken into account in defining the new “standard explanatory memorandum” and in the framework of the “extended impact analysis”. In addition, initiatives were taken to extend and systematise the obtaining of expertise in specific fields. The Commission made particular progress in the field of “scientific support for policies”, one of the priorities of the sixth framework R&D programme (2002-6). The SINAPSE electronic network (scientific information in support of policies in Europe) has been developed, and the pilot phase will be launched in the first quarter of 2005.

2.5. Updating and simplification of the Community *acquis*

With the framework measure “Updating and simplifying the Community *acquis*”,¹⁹ adopted in February 2003, the Commission launched an ambitious programme intended to ensure that Community legislation is clear, comprehensible, up to date and user-friendly.

The results of the first phase of implementation of the framework measure (March-September 2003) are mixed.²⁰ Completion of the consolidation programme represents a major advance in terms of legibility. Another essential step forward is the progressive participation of different departments in efforts to simplify legislation, as this shows a change in the regulatory culture. Shortcomings relate mainly to short- and medium-term actions aimed at reducing the volume of Community legislation (codification and removal of obsolete legislation). However, the Commission welcomes the fact that the process launched in February 2003 appears to be establishing itself and should continue to generate benefits for citizens and other users of Community legislation.

The balance sheet for the second phase of the framework measure (September 2003-March 2004) is promising with regard to obtaining the desired results for the simplification of a number of sectors of Community law and the repeal of obsolete parts of the Community *acquis*, but a little disappointing with regard to codification.²¹

The codification programme launched by the Commission in 2003 encountered significant obstacles in relation to two aspects. Firstly, due to the accession, a nine-month moratorium was applied to the adoption and publication of codified acts. Secondly, since the accession, all codification must in principle be adopted in 20 languages. This means that the adoption of those codified texts ready for adoption (in 11 languages) at the end of the moratorium will be delayed until the new language versions are ready, and that the preparation of other codified texts must be extended to cover nine new languages. As a result, it will be necessary to wait until 2005 to see the main results of the codification exercise, and the objectives of the exercise mapped out by the current Commission will not be achieved within the deadlines laid down.

¹⁸ COM(2002) 713, 11 December 2002.

¹⁹ COM(2003) 71, 11 February 2003.

²⁰ For a detailed analysis of these results, see the first report on the implementation of the Framework Action: "Updating and simplifying the Community *acquis*" (documents COM(2003) 623 and SEC(2003) 1085, 24 October 2003).

²¹ For a detailed analysis of these results, see the second report on the implementation of the Framework Action: "Updating and simplifying the Community *acquis*" (COM(2004) 432, 16 June 2004).

2.6 Regulatory agencies

The White Paper on European governance committed the Commission to:

- defining in 2002 the criteria for establishing new regulatory agencies, and the framework in which they should operate;
- defining the Community's responsibilities with regard to the monitoring of the agencies.

In December 2002, a communication from the Commission laid the foundations for a framework for future regulatory agencies.²² The communication defines certain guiding principles for the establishment, operation and monitoring of regulatory agencies. These principles are intended to promote greater coherence, transparency, effectiveness and responsibility among regulatory agencies, in accordance with the White Paper on European governance. In January 2004, Parliament adopted a resolution largely welcoming the Commission communication.²³

Interinstitutional discussions on the framework centred on three main points:

- the *scope* of the future framework. The European Parliament has stressed that there was also a need for coherence and control for existing regulatory and other agencies. Concentrating the communication on future regulatory agencies does not prejudice a later extension to cover existing regulatory and other agencies;
- the choice of the most appropriate *legal instrument*: framework regulation (adopted in accordance with the procedure referred to in Article 308 of the Treaty) and/or interinstitutional agreement. The European Parliament declared itself in favour of a framework regulation, preceded by an interinstitutional agreement;
- the *composition of the administrative board*, which remains one of the main stumbling blocks in recent negotiations on the establishment of sectoral agencies. The Commission proposes joint representation of the Community executives (Commission/Council) on the board. With a view to enlargement, Parliament has, like the Commission, declared itself in favour of limiting numbers on the board for reasons of cost-effectiveness.

On 28 June 2004 the Council adopted conclusions on "the operating framework for the European regulatory agencies", in which it declared its willingness to examine all questions relating to the structure of regulatory agencies, including the composition of the administrative board, while pointing out that this examination is justified by the evolutionary nature of the responsibilities of these agencies.

The Commission intends to proceed before the end of the year to a proposal for a binding instrument for the operating framework for regulatory agencies.

²² COM(2002) 718 final, 11 December 2002.

²³ Document EP A5-0471/2003 (Almeida Garrett report).

2.7 Improving the application and the monitoring of the application of Community law

It is the responsibility of the Commission to verify that Community legislation²⁴ is correctly implemented and to ensure, in close cooperation with the Member States, that it has a real effect. After codifying the administrative measures concerning the handling of complaints,²⁵ the Commission adopted a communication in December 2002 defining a range of measures intended to improve the monitoring of the application of Community law.²⁶

A number of specific measures are currently in place in the Commission's monitoring system. The Commission now systematically includes in draft directives a provision obliging the Member States to forward to the Commission structured and detailed information on the way in which Community law has been transposed into national law (tables of correspondence). This information is essential to the Commission for monitoring whether directives and decisions have been transposed correctly and in good time.

In addition, a website entitled "Calendar for transposition of Directives"²⁷ now enables Member States and citizens to consult on a regular basis the deadlines applicable to the transposition of Community directives. This instrument also enables better programming of transposition by national authorities and should make a significant contribution to avoiding infringement procedures for non-compliance with Community law.

The Commission has also implemented a system enabling electronic notification by the Member States of national measures transposing directives. The system became operational on 3 May 2004, and is now used by 16 of the 25 Member States. It will replace the old system of notification on paper. Its database already contains a significant number of pre-notifications by the new Member States prior to their accession to the Union. This instrument is a much more effective and rapid means of communication between the Commission and the Member States, and also facilitates access to a wide range of clearer information on each national transposition measure. The system will make an important contribution to the effective management of the implementation of directives in an enlarged Union and will improve transparency. It could therefore help to improve the application of Union law.

Other measures in question include in particular a guarantee of an immediate and formal follow-up of priority cases of infringements, favourable treatment of complementary measures where this may achieve more rapid results, making contact with the Member States at an earlier stage regarding the transposition of directives recently adopted, preparation of interpretative documents on directives, and establishing a website on the application of Community law containing a wider range of information and documentation on current progress and the approach followed.

The Commission's annual report on the monitoring of the application of Community law provides more detailed information on these questions, as well as related subjects. It

²⁴ When talking of monitoring the application of Community law, it should not be forgotten that the Commission was also given the task by the Council of verifying the measures taken by the Member States in order to comply with "third pillar" instruments in various framework decisions, an obligation in support of which the Commission has produced a number of reports.

²⁵ COM(2002) 141, 20 March 2002.

²⁶ COM(2002) 725, 11 December 2002.

²⁷ http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm.

constitutes a complete source of information on the transposition of Community law and on the management of infringement procedures by the Commission in 2003.²⁸

In its 2002 communication on improving the monitoring of the application of Community law, the Commission called for the development of instruments to complement infringement proceedings.²⁹

On the other hand, the “twinning” measure suggested by the White Paper has not been launched. The model to which the White Paper referred (the “twinning” measure financed by Phare funds and given a positive assessment by the Court of Auditors) largely met the objective sought by twinning until the end of the accession period. Moreover, the Commission did not have specific allocations for this purpose.

Nevertheless, the Commission is currently promoting actions aimed at strengthening administrative cooperation between the Member States at central, regional and local levels.³⁰

For the future, it should be noted that Article III–185 of the draft treaty establishing a Constitution for Europe introduces, along the lines indicated in the White Paper on governance, the concept of administrative cooperation between the Member States in the application of Union law. It is therefore worthwhile re-examining the action recommended by the White Paper on governance in the context of the implementation of the constitutional treaty.

2.8 Action at the level of the Community institutions

Improving the quality of Community legislation clearly requires close collaboration between the institutions involved in the legislative process, beginning with the European Parliament and the Council.

At the invitation of the Seville European Council in June 2002, the European Parliament, the Council and the Commission agreed on an interinstitutional agreement aimed at “Better lawmaking”. This agreement entered into force at the end of 2003.³¹ Its main objectives are to improve the quality of Community legislation and to transpose it into national law. It defines best practices and lays down new objectives and commitments. The main elements of the agreement are as follows:

- improving inter-institutional coordination and transparency;
- establishing a stable framework for “non-binding” instruments (“soft law”), which should facilitate their future use;
- increased use of impact analysis in the Community decision-making process;

²⁸ COM(2003) 669 final.

²⁹ In this context, the SOLVIT network has been set up to resolve problems arising from poor application of internal market law. For further details on the SOLVIT site, see item 2.10 of this report.

³⁰ For example, the ERANET actions (incorporated in the sixth Framework Research Programme), aimed at supporting the coordination of research programmes and activities by national, regional and local administrations) with a budget of 150 million euro over four years, enabling the exchange of good administrative practices, consistency in public funds and the achieving of a critical mass in research budgets in specific areas.

³¹ OJ C 321, 31/12/2003, pp. 0001-0005.

- willingness to set a binding deadline for the transposition of directives into national law.

The interinstitutional agreement on “Better lawmaking” supplements three other interinstitutional agreements which are important for improving legislation: the 1994 agreement on an accelerated working method for official codification of legislative texts,³² that of 1998 on common guidelines for the quality of drafting of Community legislation and that of 2002 on the recasting technique for legal acts.³³

The Commission judges this agreement to be generally consistent with the initiatives defined in its “Better lawmaking“ action plan of June 2002. It represents the most ambitious effort to date to improve legislation by bringing the three institutions together in a global strategy intended to permit better lawmaking at Community level, while respecting the responsibilities of each institution.

2.9 Regional and local dimension of the Union

2.9.1. Ongoing dialogue between the Commission and associations of regional and local authorities

On this subject, the White Paper stated that the Commission should establish, from 2002, at an early stage in the definition of policies, a more systematic dialogue with European and national associations of regional and local authorities.

In November 2003, following wide-ranging consultation of the sectors involved, on the basis of a Commission working document, the Commission published a communication on “permanent and systematic dialogue with associations of local authorities on policy development”.³⁴

For the coming months, application of this communication requires cooperative effort between the Commission, the associations concerned and the Committee of the Regions, with a view to refining the procedures for dialogue between the associations and the European Commission on the priorities set out in the work programme. This will be the first effective application of the dialogue laid down by the Commission. On 10 May 2004, the dialogue was inaugurated at a meeting chaired by President Romano Prodi with the participation of Commission members Jacques Barrot and Peter Balazs, the President of the Committee of the regions, Peter Straub, and representatives from a majority of European and national associations of regional and local authorities.

2.9.2. Target-based tripartite contracts and agreements

In its White Paper on governance, the Commission proposed target-based tripartite contracts and agreements between the Community, the States and the regional or local authorities as a flexible means of taking specific contexts into consideration when drawing up and implementing Community policies. The basis idea is to give infra-national authorities the competence to implement specific actions to achieve objectives defined in Community legislation.

³² JO C 102, 4 April 1996, p. 2.

³³ JO C 77, 28 March 2002, p. 1.

³⁴ COM(2003) 811 final, 23 November 2003.

From the end of 2002, the Commission proposed two phases: an initial one with pilot agreements (relating to the application of “soft law”) which is currently under way and a second in which, following an assessment of the agreements, tripartite contracts would be drawn up where appropriate (relating to the application of binding legal acts).

The Commission communication on target-based tripartite contracts and agreements³⁵ was forwarded to the Council³⁶, the European Parliament, the European Economic and Social Committee and the Committee of the Regions in December 2002.

The approach initially recommended by the White Paper (which referred only to tripartite contracts) has been supplemented by the Commission communication referred to above with the addition of the concept of a tripartite agreement. The contracts refer to binding legal acts and the agreements to non-binding legal acts. In both cases, as the White Paper mentioned, the aim is to ensure that legislation and programmes with a high territorial impact can be implemented more flexibly. The European Parliament and the Committee of the Regions welcomed the communication, without prejudice to certain specific requests, by means of a Resolution³⁷ and an Opinion³⁸ respectively. The Council has not yet reacted to the Commission communication, despite requests from the Commission. While awaiting the reaction from all institutions, the Commission had proposed an initial experimental phase. In October 2003, exploratory work began in the environmental field aimed at signing three tripartite agreements presented by three European cities.³⁹ Other Community policies (for example transport policy) could lead to another tripartite agreement. The results will fuel the Commission’s discussions on the use of this instrument.

2.10. Refocusing policies and institutions

2.10.1. European governance and the draft Constitution for Europe

Since 2000, the debate and official proposals on the reform of European governance as a political priority of the Commission have been presented as ways of increasing the legitimacy and effectiveness of the European Union without altering the treaty. The method for increasing legitimacy was conceived as a bottom-up process (by increasing participatory democracy). The method for increasing effectiveness was conceived as a top-down process (by renewing the “Community method” and thus refocusing the Union’s legislative and executive powers).

A number of themes identified by the public debate preceding the drawing up of the Commission’s White Paper on European governance, and by the Commission itself in its White Paper, formed the *leitmotiv* both for the Laeken Declaration (which launched the reform of the treaties) and for a number of working parties within the Convention on the Future of Europe.

³⁵ Communication: A framework for target-based tripartite contracts and agreements between the Community, the States and regional and local authorities (COM(2002) 709 final, 11.12.2002).

³⁶ Letter from the Secretary-General of the Commission to the Secretary General of the Council, 11 December 2002 (reference: SG/D (2002)252648).

³⁷ Resolution by Parliament on the Commission communication: "A framework for target-based tripartite contracts and agreements between the Community, the States and regional and local authorities" (Mac Cormick report), document PE 323.588/DEF, 3 December 2003.

³⁸ Overall opinion of the Committee of the Regions on the follow-up to the White Paper on European governance (Delebarre report), CONST 013, 10 July 2003.

³⁹ One project in Birmingham (United Kingdom) concerning urban mobility, one in Lille (France) relating to the management of new urban zones and one in Pescara (Italy) on urban mobility and air quality.

On the basis, among other things, of the Commission communications to the Convention, the latter took up a number of these themes, giving rise to the provisions of the draft constitutional treaty adopted in Brussels in June 2004, beginning with the consecration of the Community method, already defined and set out in the foreword to the White Paper on European governance.

Some examples of these provisions, presented in the draft treaty establishing a Constitution for Europe, are set out below:

Two provisions in the draft use, for the first time in the Union's primary legal texts, the concept of governance (good governance) at European Union level (Article I-50(1)) and on a global scale (Article III-193(2h));

Article I-50: In order to promote good governance and ensure the participation of civil society, the Union Institutions, bodies and agencies shall conduct their work as openly as possible;

Article III-193: The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to ... promote an international system based on stronger multilateral cooperation and good global governance;

Article I-3(3) (the Union's objectives) lays down that: "It shall promote economic, social and territorial cohesion, and solidarity among Member States";

Article I-5 contains a clause guaranteeing respect for the constitutional structure of each Member State, "inclusive of regional and local self-government";

Article I-22(1) (The Council of Ministers) lays down that the Council "shall, jointly with the European Parliament, enact legislation, exercise the budgetary function and carry out policy-making and coordinating functions, as laid down in the Constitution", which is linked to Article I-36 (Implementing acts) which lays down that: "Where uniform conditions for implementing binding Union acts are needed, those acts may confer implementing powers on the Commission, or, in specific cases duly justified and in the cases provided for in Article 39, on the Council of Ministers";

The provisions relating to policies have been amended in such a way that 95% of the legislative function has been refocused on the European Parliament and the Council acting in concert;

Reflecting the Commission proposal, the executive function has been clarified by the distinction between legislative delegation and executive delegation, with the latter remaining limited to implementing acts *stricto sensu*;⁴⁰

⁴⁰ Articles I-35 and I-36 aim to clarify the exercise of the executive function by introducing a distinction between competence in supplementing and amending non-essential elements of the law (attributed to the Commission under the control of the legislature) and exclusive competence *stricto sensu* (attributed to the Commission and, in exceptional cases for reasons duly substantiated, the Council). This clarification is aimed at refocusing the executive function, as is the aim of the White Paper on European governance.

Article I-45 enshrines the “principle of representative democracy” and Article I-46 introduces for the first time the “principle of participatory democracy”, together with the transparency of the legislative process;

Article III-185 introduces, along the lines set out by the White Paper on governance, the concept of administrative cooperation between the Member States in the implementation of Union law;

The Protocol on the principle of subsidiarity provides for wide-ranging consultations prior to the adoption of any legislative acts, with the possibility of taking into account the regional and local dimension of the European Union. The protocol lays down that for each framework European law a “subsidiarity statement” will be drawn up in which the Commission will assess the regulatory and financial implications of the framework law for regional and local authorities.

The conclusion can therefore be drawn that the Constitution has incorporated the debate on the reform of European governance at the level of primary Union law.

2.10.2. *Comitology*

The White Paper on European governance committed the Commission to present proposals to the intergovernmental conference on refocusing its executive responsibility, while rationalising control of the European Parliament and of the Council. In its communication on the institutional architecture, the Commission called for clarification of the roles and responsibilities of each institution within the decision-making framework.

One aspect of the delegation of competences dominated the attention of the Convention on the future of the Union, namely the new distribution of the executive function between delegated regulations and implementing acts *stricto sensu*.⁴¹ While awaiting the adoption and entry into force of a new treaty, the Commission sought to anticipate, within the framework of the current Treaty, the spirit of the innovations in the draft Constitution. In this sense, on 13 December 2002 it adopted a proposal for an amendment to the Decision on *comitology*⁴² in order to place the European Parliament and the Council on a strictly equal footing for controlling the exercise by the Commission of implementing powers for matters subject to co-decision.

The European Parliament, in a resolution dated 2 September 2003, issued a favourable opinion on this proposal⁴³, and the Commission subsequently submitted an amended proposal to the Council in April 2004 taking into account the improvements proposed by Parliament.⁴⁴ The Council has not yet issued an opinion on the proposal.

2.11. **European public area**

The task of making the Union’s working method more transparent was one of the first objectives of the White Paper to be pursued. As early as the reply to the White Paper in 2002, it was noted that civil society accorded as much, if not more, importance to governance in terms of reducing the democratic deficit of the Union’s institutions (legitimacy) as to increasing their effectiveness. The White Paper had included as an objective increasing the

⁴¹ Cf. Articles I-35 and I-36 of the constitutional treaty.

⁴² COM(2002) 719.

⁴³ Document PE A5-0266/2003 (Corbett report).

⁴⁴ COM(2004) 324, 22 April 2004.

quality of information and communication policy in the Union, and the Commission traced out a framework for achieving this result in a communication in 2001.⁴⁵

With regard to actions relating to the European public area cited by the White Paper and by the first report on governance (Governance, Futurum, Solvit and Eur-Lex websites), the most significant facts for the period 2003-2004 are as follows:

Governance website: this was completely renewed in February 2004. The site structure was updated to take account of developments in the dossiers which were the subject of the communications of December 2002 and to provide more links from the site to other sites relating to European or world governance. The average monthly number of visits to the Governance website is over 40 000.⁴⁶

Futurum website: this has contributed to the dissemination of the work of the Convention on the Future of the Union and to the establishment of a number of systems to ensure and promote participation in the debate by citizens and civil society organisations.

Since the Convention began work, the Convention Forum, managed by the Commission, has given European or national organisations the opportunity to publicise their grass-roots contributions, addressed to the members of the Convention, setting out their points of view and ideas on questions relating to the future of the European Union.⁴⁷ The website was closed in July 2003 with the end of the Convention's work.

However, in order to give civil society organisations the opportunity to continue to make their opinions known throughout the process of drawing up the European Constitution, including during the Intergovernmental Conference, a system for receiving and publishing these views was set up on the interinstitutional website devoted to the debate on the future of the European Union.⁴⁸

Futurum has also established a discussion forum, which is more or less general in nature, where debates have been launched on the draft constitutional treaty and the process of drawing it up. This discussion forum, intended for citizens, generated 16 000 contributions between 2002 and 2004.

However, the lack of intensity in the debate on the future of the Union organised in the Member States shows that this concern has not made sufficient inroads into European public opinion.⁴⁹

⁴⁵ Communication from the Commission to the Council, European Parliament, Economic and Social Committee and the Committee of the Regions on a new framework for co-operation on activities concerning the information and communication policy of the European Union (COM(2001)354, 27 June 2001).

⁴⁶ Average calculated between the months of July 2003 and May 2004.

⁴⁷ During the Convention's 15 months of work, 570 civil society organisations made over 900 contributions.

⁴⁸ Since the establishment of the Futurum public area in August 2003, 170 organisations have made contributions regarding the draft constitutional treaty.

⁴⁹ According to Eurobarometer 61 (the most recent, published in May 2004), only 41% of European citizens say they have trust in the Union, while 42% say they do not. The results of the recent European Parliament elections (with a higher rate of abstention, exceeding 50% for the 25 Member States and as much as 70% for the 10 new Member States) is also enormously revealing as to the limitations of political debate at European level.

Solvit website: as a system for solving specific internal market problems, it helps undertakings and citizens to take full advantage of their rights when they move or trade within the EU, and makes it possible to verify that national administrations correct any errors committed in applying Union law. Launched in July 2002, the system's success rate is very high, with solutions being found in 75% of cases in an average of ten weeks.

The system has been improved to enable greater direct access (in the 20 official languages); organisations representing the interests of European undertakings or citizens may now register on the system and submit cases directly online.⁵⁰ All administrations in the new Member States had established a fully operational SOLVIT centre by the date of enlargement.

Eur-Lex website: Work on improving the Eur-Lex website is currently concentrated on placing online the directory of Community legislation in force. In terms of public access to Community law, this would be for the Commission the conclusion of an approach it has always defended for reasons of cost-effectiveness. Online provision should be supplemented by printed publications, in accordance with models to be defined. The merging of the CELEX and Eur-Lex systems, which came into force on 1 July 2004, may lead to the replacement of the current model for publication of the directory. Access to the new system resulting from the merger is free as of 1 July 2004.

Finally, policy with regard to public access to documents has proceeded on the basis of the adoption of the Regulation of the European Parliament and of the Council which guarantees access for all to documents drawn up or held by Parliament, the Council and the Commission,⁵¹ with the only limitation being the protection of certain public or private interests. This Regulation grants citizens a general and unconditional right of access to the documents of the institutions, with no category of documents excluded. Its implementation two years ago marked a significant step in the development of a European policy of transparency: over two thirds of requests for access received by the three institutions have led to the divulging of unpublished internal documents and a growing number of documents is being made directly accessible to the public via the Internet. This increased transparency increases the confidence of citizens in the Community administration and strengthens European democracy.

3. GENERAL REVIEW OF THE IMPLEMENTATION OF THE WHITE PAPER

The Commission which reaches the end of its term of office in November 2004 has traced a line of thought and action on European governance which is progressive in content and consistent in its implementation of the White Paper, including its position on the Constitution of the Union.

⁵⁰ Some 400 organisers, including Euro-information centres, chambers of commerce and citizens advice bureaux are currently registered on SOLVIT. Moreover, many MEPs – including the President of Parliament – are registered on SOLVIT and may submit cases from their constituents.

⁵¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council and its implementing provisions.

A large majority of the actions the Commission undertook to carry out at the beginning of its term of office have been carried out. The annex to this report contains a summary: eight general, complex actions out of the 11 committed to by the Commission have been carried out and one is in progress.

4. REVIEW OF THE IMPLEMENTATION, DURING THE TERM OF OFFICE 2000-2004 OF THE EUROPEAN COMMISSION, OF ACTIONS SET OUT IN THE WHITE PAPER ON EUROPEAN GOVERNANCE.

Reference to paragraphs in this report	Action set out in the White Paper	Progress in implementation as of June 2004
2.1.	Presentation to the European Council of an Action Plan on better regulation .	Done
2.2.	Adoption of minimum standards for consultation and publication and publication of these standards in a code of conduct.	Done
2.2.	Drawing up of more extended partnership agreements in certain sectors.	Not carried out
2.3.	Adoption of a communication on impact analysis and guidelines for implementation.	Done
2.4.	Publication of guidelines for the Commission on obtaining and using expertise in order to ensure responsibility, pluralism and integrity. These guidelines will also provide for publication of the advice tendered by experts.	Done
2.6.	Definition of criteria for establishing new regulatory agencies , the framework in which they should operate and the responsibilities of the Community with regard to the monitoring of these agencies.	Done
2.7.	Proposal, drawing on experience acquired with the candidate countries, for systems of twinning between national administrations in order to promote the sharing of best practices with regard to the implementation of measures in particular sectors and raising awareness of Community law among national courts and lawyers.	Not carried out
2.7.	Establishment of criteria to be used to define priorities for examining possible breaches of Community law and codification of the administrative rules in force concerning the processing of complaints.	Done
2.9.1.	Establishment, at an early stage of policy definition, of a more systematic dialogue with European and national associations of regional and local authorities .	Done
2.9.2.	Launch of pilot " target-based tripartite agreements " in one or more fields as a more flexible means of ensuring the implementation of Community policies.	Agreements
2.10.	Presentation to the IGC of proposals to refocus the Commission's executive responsibility , while rationalising the control exercised by the Council and the European Parliament over the way in which it exercises its implementing powers.	Done